

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

September 12, 2008

Board of Land
and Natural Resources
Honolulu, Hawaii

Request for Final Approval for Amendments to Hawaii Administrative Rules,
Chapter 13-51, Kahului Harbor, Maui Fisheries Management Area

Submitted for your consideration and final approval is a request to amend Hawaii Administrative Rules (HAR) to better manage the fishing issues occurring at Kahului Harbor within the fisheries management area.

Fishing-related conflicts have occurred in Kahului Harbor over the years. DAR has attempted to identify and address these issues through numerous meetings with the various fishing groups to discuss their concerns and develop these amendments. The public hearing was held on May 14, 2008. Since the Board last reviewed and approved the draft at its meeting of November 17, 2006, changes were made to the format and renumbering of certain sections. The Department of the Attorney General made a change in the penalty provision for failure to report at the check-in station, making such violations subject to a civil penalty rather than a criminal penalty.

RECOMMENDATION:

"That the Board approve the amendments to Chapter 13-51, Kahului Harbor, Maui Fisheries Management Area."

Respectfully submitted,



DAN POLHEMUS
Administrator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson

Rules Amending Title 13
Hawai'i Administrative Rules

(date)

1. Chapter 51 of Title 13, Hawai'i Administrative Rules, entitled "KAHULUI HARBOR, MAUI" is amended and compiled to read as follows:

"HAWAI'I ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 51

KAHULUI HARBOR, MAUI

§13-51-1	Definitions
§13-51-1.1	Boundaries
§13-51-2	Regulated activities
§13-51-3	Fisher check station requirements
§13-51-4	Penalty
§13-51-5	Severability

§13-51-1 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Akule" means any fish identified as *Selar crumenophthalmus* or other recognized synonym. This fish is also known as pa'a'a, halalū, hahalalū, and big-eyed scad.

"Area" means the Kahului Harbor fisheries management area as described in section 13-51-1.1.

"Board" means the board of land and natural resources.

"Crab net" means a type of fishing gear consisting of netting material over a flat, circular hoop frame, specifically designed to entangle or catch crabs as they crawl or swim onto a net set flat on the bottom.

"Department" means the department of land and natural resources.

"Fishing-related activities" means actions which take marine life.

"Group" means two or more people, including but not limited to members of the same family, who purposefully fish together for at least a portion of their fishing activity.

"Hand net" means a net consisting of a mesh bag attached to a frame to hold the bag open, and a handle. The net is small enough for use with one hand by one person.

"Kahului Harbor" means [that]the harbor [situated]situate at Kahului, Wailuku, Maui, Hawai'i.

"Landing net" means a hand net used to secure capture of marine life, after the marine life has been first hooked or otherwise detained, to prevent the marine life from being released.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweed or other marine plants, including any part, product, seed, or holdfast thereof.

"Mullet" means any fish known as *Mugil cephalus* or any recognized synonym.

"Nehu" means any fish known as *Encrasicholina purpurea*, *Stolephorus purpureus*, or any recognized synonym.

"Push net" means a type of fishing gear consisting of netting material in the shape of a flat, rectangular, single panel, with straight handles

attached on two opposite sides of the net and designed to be held with both hands.

"Snag" means to hook or attempt to hook a fish on any portion of its body elsewhere than its mouth.

"Take" means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, or harvested, shall be construed as taking. [Eff 3/8/84; am and comp]
(Auth: HRS §188-53) (Imp: HRS §188-53)

§13-51-1.1 Boundaries. The Kahului Harbor fisheries management area shall include that portion of the submerged lands and overlying waters of Kahului Harbor beginning at the upper reaches of the wash of the waves at the shoreline and bounded by an imaginary straight line drawn between the seaward edges of the two breakwaters forming the harbor entrance channel and further described in the map entitled "Kahului Harbor Fisheries Management Area 10/20/2006" attached at the end of this chapter and made a part of this section [Eff] (Auth: HRS §188-53)
(Imp: HRS §188-53)

§13-51-2 [Prohibited] Regulated activities. (a)
[No person shall use any thrownet, or draw, drag, seine or any other type of net except crab net and hand net for shrimp, within those portions of Kahului Harbor:

- (1) Bounded by the shoreline between Kahului Harbor piers 1 and 2, and a seaward boundary delineated by a straight line drawn from the base of Kahului Harbor pier 2 across to the

southernmost corner of the building on Kahului Harbor pier 1, designated as area 1;

- (2) Bounded by the shoreline along the southeastern portion of Kahului Harbor between the Puunene Avenue extension to and along Kahului Harbor pier 2, and a seaward boundary delineated by a straight line drawn from the northwesternmost corner of Kahului Harbor pier 2 to the shoreline at the Puunene Avenue extension, designated as area 2; and
- (3) Bounded by the shoreline along the southern portion of the Kahului Harbor park adjacent to the boat launching ramp and the shoreline along Kahului Beach Road, and a seaward boundary delineated by a straight line drawn following the northern portion of the eastern shoreline of the Kahului Harbor park to the shoreline along Kahului Beach Road, designated as area 3; as delineated on the "Map of Kahului Harbor, Maui, 01/13/84", located at the end of this chapter.

(b) It is unlawful for any person, while within the area, to:

- (1) Use any net, except that a person may use:
 - (A) A bait net to take nehu and other baitfish with a valid nehu bait license issued pursuant to section 13-74-22;
 - (B) A net, except lay net, to take only akule with a valid commercial marine license issued pursuant to section 13-74-20 and subject to the provisions of section 13-75-12.2;
 - (C) A landing net to secure hooked marine life;
 - (D) A push net or hand net while on the shore to take shrimp and other marine life, provided that the push net or hand net, including the handle or handles, is not more than three feet in any dimension;

(E) A crab net is not more than two feet in diameter to take crabs, provided that no person may use more than ten such crab nets at any time; and

(F) A net to take mullet less than three inches fork length and other marine life for the purpose of stocking a licensed aquaculture facility, subject to the provisions of a valid aquaculture license issued pursuant to section 13-74-43.

(2) Take or possess a total bag limit of more than fifty marine life per person per day, except that a person may possess more than the total bag limit:

(A) Of baitfish with a valid nehu bait license issued pursuant to section 13-74-22; and

(B) Of akule with a valid commercial marine license issued pursuant to section 13-74-20.

(3) Snag any marine life; and

(4) Use more than two poles, provided that each pole may have only one line, and each line may have no more than two hooks, with each hook having only one point, while at or near the shoreline.

(b) It is unlawful for any person to take any marine life from the area or use any fishing gear while in the area that may otherwise be prohibited by law.

(c) The department may issue permits to engage in activities prohibited by this section for scientific, propagation, or other purposes, in accordance with section 187A-6, Hawai'i Revised Statutes, and as may be otherwise authorized by law, provided that:

(1) The department may impose terms and conditions it deems necessary to conserve and manage the marine life in the area;

(2) The board may revoke any permit and assess a

- fine or other penalty for any infraction of the terms and conditions of the permit; and
- (3) A person whose permit was revoked shall not be eligible to apply for another permit for up to one year after the date of revocation.
- (d) Unless prohibited in this section, all other legal fishing gears may be used within the area.
- (e) Nothing in this chapter shall be construed as allowing activities within any portion [ot]of Kahului Harbor, which may be otherwise prohibited by law or rules adopted by the department of transportation. [Eff 3/8/84; am and comp]
(Auth: HRS §§187A-6, 188-53) (Imp: HRS §188-44, 188-45, 188-53)

§13-51-3 [Permitted activities. Pond owners or operators, or commercial fishermen, with an appropriate license, may use nets within the protected areas to:

- (1) Take young mullet or pua (Mugil cephalus) for the purpose of stocking their pond;
or
- (2) Take nehu, iao or other baitfishes for which an open season has been declared for bait purposes only.]Fisher check station requirements. The department is collecting catch per unit effort information through reporting by all those who voluntarily enter the Kahului Harbor Fisheries Management Area for fishing or fishing-related activities.

(a) To achieve this purpose, all individuals and groups entering the area to take marine life shall sign their names on a departmental form located at a designated fisher check station in the Kahului Harbor Fisheries Management Area. Designated fisher check stations are located near the boat launch ramp at the northwestern end of the harbor and near Pier 2 at the southeastern end of the harbor.

(b) When departing the area or at the end of the bout of fishing activity, all individuals and groups

should sign out of the same designated fisher check station at which they signed in. All individuals and groups signing out shall also fill out a departmental report form regarding their fishing activity during the fishing trip, including all marine life taken from the area. The fishing reports shall be confidential and used to monitor and manage fishing activity in the area. Groups may submit one fishing report that details the fishing activity of all members of the group, but each individual member may be responsible for the accuracy of the report as to that individual.

(c) Failure to perform the reporting requirement in the above subsection may result in the assessment of administrative penalties pursuant to chapter 199D, Hawai'i Revised Statutes, section 187A-12.5, Hawai'i Revised Statutes, or any regulations promulgated in accord with these statutes. Criminal penalties will not be assessed for a violation under this section, but shall remain otherwise severable. [Eff

] (Auth: HRS §§187A-12.5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 199D-2)

§13-51-4 Penalty. Unless specifically provided, [Any] any person violating the provisions of this chapter may be punished as provided by sections 187A-12.5, 188-70, or chapter 199D, Hawai'i Revised Statutes, and as may be otherwise provided by law. [Eff 3/8/84; am and comp] (Auth: HRS §§187A-5, 188-53, 199D-1) (Imp: HRS §§187A-12.5, 188-70, 199D-1 to 199D-2)

§13-51-5 Severability. The provisions of this chapter are declared to be severable, and if any portion, or the application thereof, to any person or property is held invalid for any reason, the validity or application of the remainder of these rules to other persons or property shall not be affected."
[Eff] (Auth: HRS §188-53) (Imp: HRS §§1-23, 188-53)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-51, Hawai'i Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawai'i Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

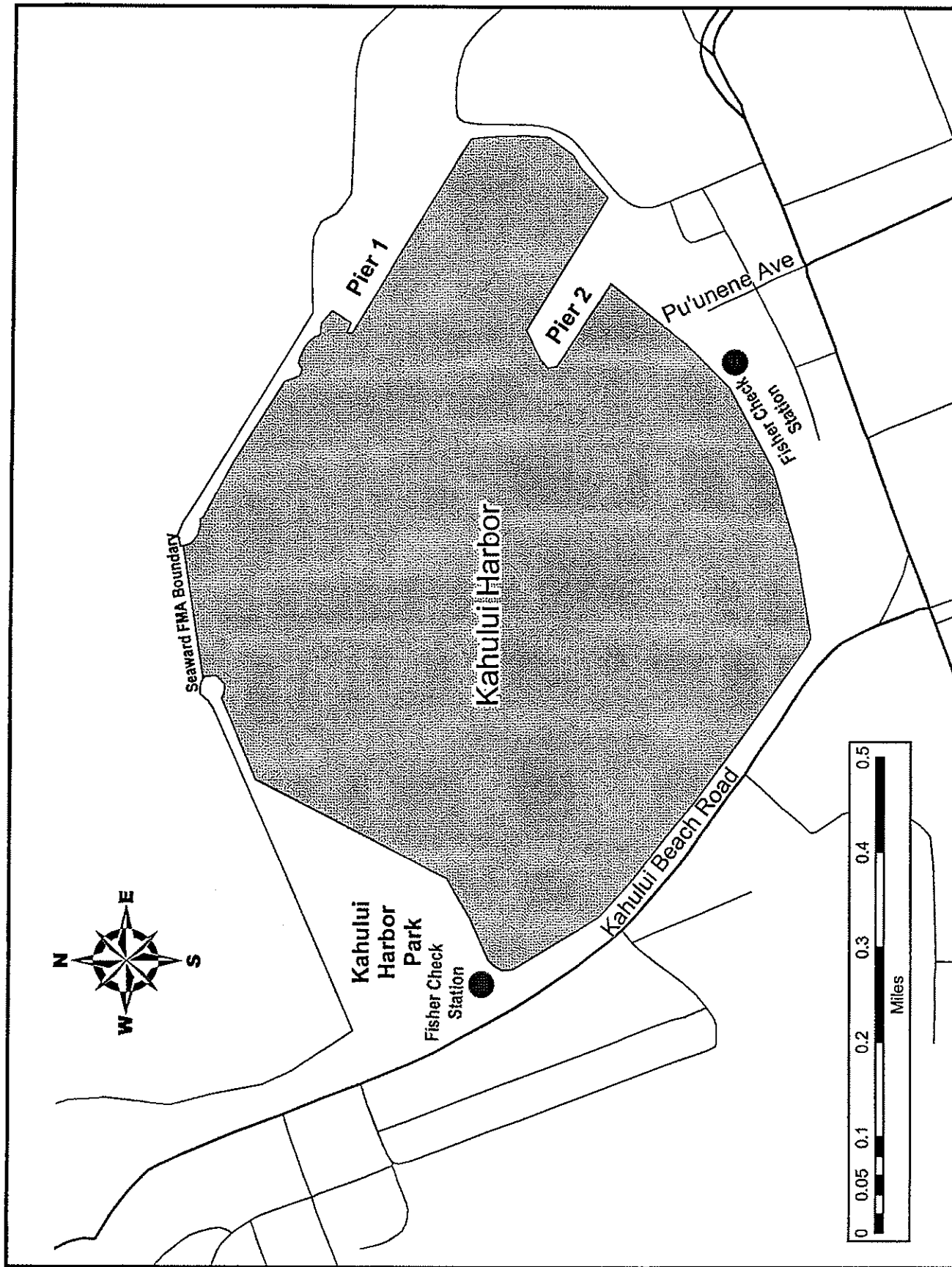
LAURA H. THIELEN, Chairperson
Board of Land and
Natural Resources

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General

Kahului Harbor Fisheries Management Area: 10/20/2006



Public Hearing
Amending Hawaii Administrative Rules
Chapter 13-51, Kahului Harbor, Maui Fisheries Management Area

Hearing Location: Lihikai Elementary School Cafeteria

Hearing Date: May 14, 2008

I. Introduction

A. Opening

1. It is now 6:35 P.M. and this Public Hearing is called to order.
2. This is a formal Public Hearing on the Administrative Rules of the Department of Land and Natural Resources.
3. My name is Skippy Hau and I am an Aquatic Biologist with the Division of Aquatic Resources; I will conduct this public hearing.

B. Purpose

4. The purpose of this hearing is so that the Department can receive public testimony on proposed changes to administrative rules regulating fishing in the Kahului Harbor Fisheries Management Area.
It is to afford all interested persons an opportunity to submit data, views, or arguments on these proposed changes.
For Chapter 13-51, these proposed rule changes would generally restrict net use, establish a daily bag limit of 50 specimen per person, prohibit snagging, limit pole fishing to two pole per person, require persons fishing to sign in and out and fill out fishing reports when leaving.
5. I hope that all of you have signed in. If not, please do so, so that we may have a complete record of all persons attending this hearing.
6. There is also a separate sheet to sign for those wishing to present testimony on the proposed rule changes.
7. When it is time to testify, I will call the names in the order that they are listed on the sign-in sheet.

C. Present staff and others

1. At this time, I would like to introduce members of DAR staff:
2. With me tonight are Mrs. Kainoa Gonsalves who will serve as secretary and Mr. Russell Sparks, our Education Specialist, helping with this meeting.
3. Those signing the attendance sheet were: Wayne Kobayashi, T. Yoshimura, Robert McGrath, Iris Ginoza, Jerry Edlao, Eric Sakutori, Michael Sueoka, Darrell Tanaka, Darren K Gibo, Melissa Tanji, Matt

Yamamoto, Oliver H Cummings, Takeo Miyaguchi, Rudy Souza, Irene Bowie (Maui Tomorrow), Tom Stevens, Patrick J Borge Sr., Joe Nobriga Sr., Ed Lindsey & wife, Nicholas Giaconi, George Kaya, Pearl Kaya, Richard Uena, Harvey Uena

II. Background

- A. These proposed rule changes are the result of public meetings and discussions held on Maui to address fishing conflicts and other fishing related issues within the harbor. Public meetings were held beginning in 1998 and again during 2005-2006, to discuss the issues and receive input on the preliminary proposals.
- B. Approvals to conduct this public hearing have been obtained by the Board of Land and Natural Resources (11/17/06), and Governor Lingle (2/10/08).
- C. Copies of the administrative rules are available for inspection at the table near the entrance. During this hearing we want to obtain your testimonies on these proposals.

III. Notice of public hearing

- A. Notices of this public hearing were placed in the April 13, 2008 Sunday edition of the Honolulu Star Bulletin and Maui News.

IV. Hearing procedures

- A. This hearing will be conducted as follows:
 - 1. I will explain the proposed changes to the administrative rules.
 - 2. Then I will call on those who have signed up to testify as they are listed on the sign in sheet.
 - 3. Please keep your testimony brief and on the subject in order to allow all those who came tonite, the opportunity to testify.
 - 4. After those who signed up have presented their testimonies, I will ask if anyone else wishes to testify.
 - 5. We are tape recording this hearing so that we can get a complete transcript of the hearing, so please state your name for the record.
 - 6. Please remember to respect the opinions of all testifiers, that this hearing is not an opportunity for accusations or rebuttals. There may be differing opinions, and we will respect that. Everyone will have an opportunity to voice their opinions so that they may be considered.
 - 7. If you have a question, please direct it to me, and I will find the most appropriate person to answer.

V. Rule Explanation (summarize the rule changes).

Main rule amendments include provisions to restrict net use, establish a daily bag limit of 50 specimen per person, prohibit snagging, limit pole fishing to two poles per person, require persons to sign in and out and to fill out fishing reports when leaving.

VI. Testimonies

A. As I call your name, please come to the microphone, and state your name.

Oral testimonies

1. DARREL TANAKA – I'm in support of the rules, with recommendations for amendments. As for the current rules, a person may only catch 50 nehu. I would think that if someone was proficient enough to catch nehu with a scoop net, should allow them to catch at least a quart, if a gallon was not acceptable, to the fishers in the harbor. They're concerned about maintaining the nehu schools, but it is the only calm water place where lots of people go. I know there are some people who like eating nehu. Maybe lower the bag limit, it is with a scoop net. As far as the akule, it says in the rules here, a person may take akule with I assume a surround net, but it also says later on, under the 50 fish bag limit, anybody may take more than the 50 limit with a commercial marine license. I think there should be a stipulation that it should be with a surround net. The way its written, someone could interpret this to say if someone has a commercial marine license, you can hook more than 50 all day long.

Would recommend an additional Check-in station #3 across from Harbor Lights. A lot of kids go fishing who would be hard pressed to walk to either check-in stations to check in, so maybe a third one there. Check-in stations can work. I'm a little partial to them because I'm a hunter. Some people use them correctly, some don't. Doesn't matter if you under-report or not. It shows proof that you're using the area. When we go hunting, we show we're using the area. So anytime an environmental group wants to shut down our hunting area, we can show all these hunters use this area. That's a very important area for them. That's the main purpose of a check-in station, to prove use. Thank you.

2. TAKEO MIYAGUCHI – (Also submitted written testimony)

I'm a retiree and an avid fisherman. I am strongly in support of these rules. Discussions of these rules have been in the works for three years. The harbor is a very importing area for fishermen because of easy access and relative safety from dangerous ocean conditions for youngsters and families. I urge all recreational fishers to support the DLNR in their efforts. Thank you.

3. RUDY SOUZA – I've fished in the harbor for many years and now there no fish in the harbor. There's an invasive species of seaweed in there that I've never seen before. I went to catch opae but, this year, there's no opae. I accept some of the rules they have, except for the 50 fish per day per person. I've been fishing

halalu all the time in the harbor and there are people who catch 400-500, 5-gallon cans, coolers full. They come at 4:00 in the morning and they don't leave until 7:30 at night. Now because the way the rule is, 50 per person, you got 10 kids, each one of the kids count, right? The rule should change to say 50 per person with a pole. You have a pole, you only allowed to catch 50, then get out of there. Because I've seen people that catch beyond (the limit) and don't leave. Someone takes it to the car then comes back, because there's no enforcement. That's the only thing I want to see changed. With a pole you only allowed 50. Without a pole, you don't catch any. Thank you.

4. IRENE BOWEE – I'm with Maui Tomorrow Foundation. I appreciate the public meeting before the hearing because I and a lot of people read the story in the Maui News and immediately thought it was part of the expansion of Kahului Harbor and a way to discourage recreational use of the harbor. I understand, now, what the DLNR is trying to do with this. I respect the fishermen and encourage the fishermen to sign-in because I think it's going to be vital with the proposed expansion of the harbor, to prove the amount of recreational use in the harbor. I do wonder about the enforcement. It seems like an "honor system" may be marginal. I think if there's any way for officers to be there, that would be ideal. I would also wonder if you could have follow up public meetings to discuss if the honor system is working because I think it's really important to get accurate numbers. I did hear from harbors director Mike Fornbey that the west expansion of the harbor has been postponed, not looking to do that for at least six years or more. That's vital time for the fishermen to show the use of the harbor. Thank you.

5. PATRICK J. WARD SR - Rules and regulations in life are always here. We thought we had a free country. But, the more rules and regulations we get, it's not becoming a free country anymore. You got to register here and there. I can see if the harbor had lots of fish. But the harbor is only seasonal. When the papio and the akule come in, you should make the regulations only during those months, when those things are here. Other than that, you only going to catch balloon fish. I had two fishing tournaments the last two years down there. I'm with the Hale Kiawe Fishing Club. The biggest fish that we caught, balloon fish won the first prize. The most fish – balloon fish. Regulations are good, but don't make them all year around. Make it seasonal, because it's just like prison, you have to check-in here, check-in there. You in school again, have to check-in again. We have the right. Someone going to be there 24 hours? There's guys that fish overnight. Are there going to be guys there 24 hours to monitor them? Yes, rules and regulations we need, but not all the time. There's some freedoms we get, we're entitled to that. We fish all the time there so we know. Thank you.

6. Oliver H Cummings Sr. - Aloha everybody. I don't usually come up and testify. I feel like I'm being squeezed. The harbor has been by playground. I'm born and raised here. The only recreation I had was the harbor. Nobody bothered me. All of a sudden, we getting regulations. Our freedoms are being taken away from us. We

need rules and regulations but these rules are to give the State permission to put us in line like a bunch of communists. I feel like the harbor is my playground, my freedom. And that freedom has been taken away. What you going to do with 15 fish, boil them with plenty water. To feed your family, it's impossible. The 50 fish sounds good, I go along with that. I don't know about the check-in. Sure you get to know what's coming out of the ocean and the State gets to know what's happening. Everytime I throw my line in, I get hammerhead. What we need regulation over there for? I feel the harbor should be a special place where people can go take one pole and fish. How much fish you can bring up with one pole? Not enough to make the reports that they want. I don't know how these reports going with the fines. It's another communist deal. I'm sorry if I hurt anybody's feelings. I'm just trying to speak my peace. Thank you.

7. ED LINDSEY (also submitted written testimony) – I am chairperson of the Maui Nui Marine Resource Council, recently formed in November. We would like to go on record to support these new rules. No netting, no snagging, two poles per person, 50 bag limit for halalu and similar juvenile fishes, and the establishment of a check or monitoring station. At first sight of these rules, it appears as an incursion on our fishing enjoyment and fishing island style as we have enjoyed for generations. It may also seem to be taking our freedoms away. However, Maui has grown, more people, more traffic, more shopping centers, more big boxes, more demands on our natural resources, more displacement of our regular recreation areas. We have urbanized. We need to protect our simple joys, as simple island peoples. As more people come to Maui from all over the world, they bring their own values. Different from our Hawaiian heritage of sharing, taking only what we need, respect and consideration of other people's rights, and aloha. All this is being replaced by greed, money, me, mine, I. The Japanese word is *hoitobo*. The Hawaiian word is *anunu*.

The need for expanding Kahului Harbor is evident with the supper ferry, cruise ships, fuel ships, food ships, recreation needs and fishing. I can remember when we could fish the entire area without anyone telling us what we can and cannot do. It was common sense. Today, because this expanding need, we have lost access to some of our favorite spots, and the exclusionary areas will increase. In order to keep our access we need to establish our territory. The government will only recognize the data and scientific evidence to preserve our recreational areas. Please join with us and support this new plan who in a large part came from the current and past users of this harbor. Aloha

8. IRIS GINOZA - I'm a recreational fisherman. I like to go down to the harbor and fish. Near the shoreline, I've caught ahuahua, holehole, mamu, tohe. Sometimes we catch balloon fish and sharks. We like to go there because it's a safe environment for us. And it's an easy access for me. I would like more of the harbor opened up so we can drive to the fishing areas than the amount of areas we have right now. I support the rules. I think two poles is enough for one person. If

it's 50 of each species, that fine. But if it's a total of 50, that might be hard on some people. Thank you.

Written testimonies were received from the following persons: Ed Lindsey (Maui Nui Marine Resource Council) in support; Takeo Miyaguchi in support; Eric Sakutori in opposition.

- B. Are there others who wish to testify? None responded.
- C. Late testimonies: Persons unable to attend tonight or wishing to present additional comments, may mail written testimony to us by Friday, May 30, 2008.
Please mail testimonies to:
Department of Land and Natural Resources
1151 Punchbowl Street, Rm 330
Honolulu, HI 96813

VII. Decision-making on the proposals:

- A. Based on the testimonies presented, the Department will submit its findings and recommendations to the Board of L&NR.
- B. If approved by the Board, legal review will be done by the Attorney General, and then if approved, will be given to the Governor for her final approval.
- C. Should the Governor grant approval, certified copies will be filed with the Lt. Governor's office, and after 10 days, it becomes effective.

VIII. Adjournment

- A. On behalf of the Board of Land and Natural Resources and DAR, thank you for attending this public hearing. This public hearing is now adjourned.
Time: 7:00 P.M.
- B. Drive home carefully.